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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BOARD OF TRUSTEES OF EMPLOYEE
PAINTERS' TRUST; BOARD OF
TRUSTEES OF PAINTERS &
FLOORCOVERERS JOINT COMMITTEE;
BOARD OF TRUSTEES OF PAINTERS,
GLAZIERS & FLOORCOVERERS JOINT
APPRENTICESHIP & JOURNEYMAN
TRAINING TRUST; BOARD OF
TRUSTEES OF PAINTERS ORGANIZING
FUND; BOARD OF TRUSTEES OF
PAINTERS, GLAZIERS &
FLOORCOVERERS SAFETY TRAINING
TRUST FUND; BOARD OF TRUSTEES OF
SOUTHERN NEVADA PDCA/FCA
INDUSTRY PROMOTION FUND; BOARD
OF TRUSTEES OF SOUTHERN NEVADA
PAINTERS & DECORATORS &
GLAZIERS LABOR-MANAGEMENT
COOPERATING COMMITTEE TRUST;
BOARD OF TRUSTEES OF
INTERNATIONAL UNION OF PAINTERS
& ALLIED TRADES INDUSTRY PENSION
FUND; BOARD OF TRUSTEES OF IUPAT
FINISHING CONTRACTORS INDUSTRY
FUND; BOARD OF TRUSTEES OF
PAINTERS & ALLIED TRADES LABOR
MANAGEMENT COOPERATION
INITIATIVE; BOARD OF TRUSTEES OF
SOUTHERN NEVADA GLAZIERS &
FABRICATORS PENSION TRUST;
BOARD OF TRUSTEES OF SOUTHERN
NEVADA PAINTERS MARKET
RECOVERY TRUST FUND

Plaintiffs,

CASE NO.: 2:16-cv-00745-KJD-PAL

STIPULATION AND ORDER FOR
ENTRY OF JUDGMENT BY
CONFESSION

2:16-ms-00032

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

1 v.

2 RECREATION DEVELOPMENT
3 COMPANY, LLC, a Nevada limited liability
4 company,

5 Defendants.
6

7 The Plaintiffs identified above (hereinafter "Plaintiffs" or "Trusts"), acting by and
8 through their attorneys, Christensen James & Martin, and the Defendant Recreation
9 Development Company, LLC ("Defendant"), hereby Stipulate and Agree ("Stipulation") as
10 follows:

11 1. This Stipulation and Order for Entry of Judgment by Confession is entered into by
12 and between the Plaintiffs and Defendant to settle and conclude certain legal disputes relating to
13 the payment of fringe benefit contributions, liquidated damages, interest, audit costs and
14 attorney's fees owed to the Plaintiffs by Defendant.

15 2. A Judgment by Confession shall be entered in favor of the Plaintiffs and against
16 Defendant for the sum of Ninety Seven Thousand Three Hundred Eighty One and 84/100 Dollars
17 (\$97,381.84), which sum includes all fringe benefit contributions and damages owed to the
18 Trusts for the periods October 1, 2012 through June 30, 2015 ("Audit Period") and July 1, 2015
19 through August 30, 2015 ("Post-Audit Period"), plus pre-judgment interest, liquidated damages,
20 audit costs, attorney's fees, and costs.

21 3. This Stipulation is conditioned by certain and specific terms contained within the
22 Judgment by Confession executed contemporaneously herewith and incorporated herein by this
23 reference.

24 [PARTY SIGNATURES FOLLOW]
25
26
27
28

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1 CHRISTENSEN JAMES & MARTIN

2 By: Wesley J. Smith
3 Wesley J. Smith, Esq.
4 Attorneys for Plaintiffs

5 Date: February 17, 2016.

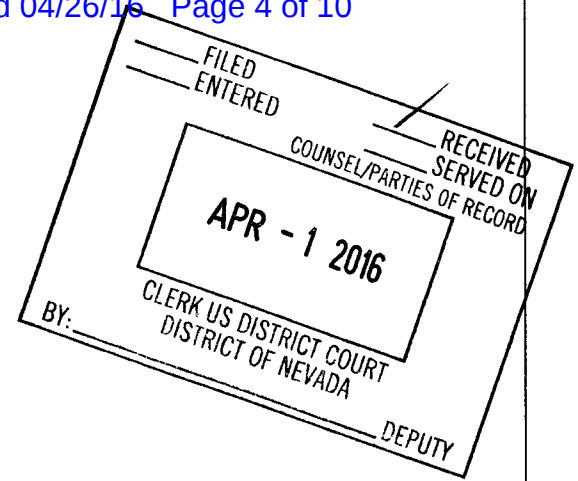
RECREATION DEVELOPMENT COMPANY, LLC

By: [Signature]

Its: JOFF HARTIG PRESIDENT

Date: February 16, 2016.

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 BOARD OF TRUSTEES OF SOUTHERN
 NEVADA PAINTERS MARKET
 RECOVERY TRUST FUND

CASE NO.: 2:16-cv-00745-KJD-PAL

JUDGMENT BY CONFESSION

2:16-ms-00032

Plaintiffs,

CHRISTENSEN JAMES & MARTIN
 7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
 PH: (702) 255-1718 § FAX: (702) 255-0871

1 v.

2 RECREATION DEVELOPMENT
3 COMPANY, LLC, a Nevada limited liability
4 company,

5 Defendants.

6
7 Pursuant to the express Stipulation and Order for Entry of Judgment by Confession
8 (“Stipulation”), it is hereby ORDERED, ADJUDGED AND DECREED that:

9 1. This Court has jurisdiction of this case pursuant to Section 502(e)(1) of the
10 Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §
11 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil
12 actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3),
13 to redress violations or enforce the terms of ERISA or an employee benefit plan governed by
14 ERISA. Such jurisdiction exists without respect to the amount in controversy or the citizenship
15 of the parties, as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

16
17 2. This Court has jurisdiction of this case pursuant to Section 301(a) of the Labor
18 Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a), which grants
19 the United States District Courts original jurisdiction over suits for violation of contracts
20 between an employer and labor organization in an industry affecting commerce, without respect
21 to the amount in controversy or the citizenship of the parties. To the extent this Case presents any
22 state law claims, this Court has supplemental jurisdiction over those claims pursuant to 28 U.S.C.
23 § 1367(a).

24
25 3. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C.
26 § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in that this is the Judicial
27 District in which the Plaintiff trust fund is administered.
28

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1 4. The Plaintiffs, the Boards of Trustees of the EMPLOYEE PAINTERS' TRUST;
2 PAINTERS & FLOORCOVERERS JOINT COMMITTEE; PAINTERS, GLAZIERS &
3 FLOORCOVERERS JOINT APPRENTICESHIP & JOURNEYMAN TRAINING TRUST;
4 PAINTERS ORGANIZING FUND; PAINTERS, GLAZIERS & FLOORCOVERERS SAFETY
5 TRAINING TRUST FUND; SOUTHERN NEVADA PDCA/FCA INDUSTRY PROMOTION
6 FUND; SOUTHERN NEVADA PAINTERS AND DECORATORS AND GLAZIERS LABOR-
7 MANAGEMENT COOPERATING COMMITTEE TRUST; INTERNATIONAL UNION OF
8 PAINTERS & ALLIED TRADES INDUSTRY PENSION FUND; IUPAT FINISHING
9 CONTRACTORS INDUSTRY FUND; PAINTERS & ALLIED TRADES LABOR
10 MANAGEMENT COOPERATION INITIATIVE; SOUTHERN NEVADA GLAZIERS &
11 FABRICATORS PENSION TRUST; and SOUTHERN NEVADA PAINTERS MARKET
12 RECOVERY TRUST FUND (collectively the "Plaintiffs" or "Trusts"), are express trusts created
13 pursuant to written declarations of trust, consistent with Section 302(c) of the Labor-
14 Management Relations Act of 1947, as amended [29 U.S.C. § 186(c)(5)], existing to provide
15 benefits to participants in Nevada.

16
17
18 5. At all times material herein, the International Union of Painters and Allied Trades,
19 District Council 15 ("Union") has been labor organizations representing employees in the
20 construction industry in Nevada. The Union is a labor organization representing employees in an
21 industry affecting commerce within the meaning of Section 301(a) of the LMRA, as amended
22 [29 U.S.C. § 185(a)].

23
24 6. Defendant RECREATION DEVELOPMENT COMPANY, LLC ("Defendant" or
25 "RDC") is party and signatory to one or more labor agreements with the Union whereby RDC
26 agreed to be bound by the terms and conditions of the Painters & Decorators Master Agreement
27 ("Labor Agreement").
28

1 7. By executing the Labor Agreement, RDC also agreed to be bound by the terms
2 and provisions of the Trust Agreements utilized to create the Trusts. The Trusts are intended
3 beneficiaries of the Labor Agreement.

4 8. The Plaintiffs shall take Judgment by Confession ("Judgment") against Defendant
5 for the sum of Ninety Seven Thousand Three Hundred Eighty One and 84/100 Dollars
6 (\$97,381.84) ("Judgment Amount"), which sum includes all fringe benefit contributions and
7 damages owed to the Trusts for the periods October 1, 2012 through June 30, 2015 ("Audit
8 Period") and July 1, 2015 through August 30, 2015 ("Post-Audit Period"), plus pre-judgment
9 interest, liquidated damages, audit costs, attorney's fees, and costs. A summary of amounts owed
10 and included herein is attached hereto as **Exhibit 1**.

11 9. Interest shall accrue on the Judgment Amount at the rate of seven percent (7%)
12 per annum from December 15, 2015 until paid in full.

13 10. On or before March 31, 2016, Defendant shall remit payment(s) to the Trusts in
14 the amount of Eighty Seven Thousand Five Hundred Eighty Seven and 58/100 Dollars
15 (\$87,587.58) ("Judgment Payment").

16 11. Defendant intends to pay the Judgment Payment from Defendant's contract
17 proceeds held in retention on the Las Vegas Federal Justice Tower project located at 501 South
18 Las Vegas Boulevard, Las Vegas, Nevada 89101 ("Project"). Defendant shall execute an
19 Assignment of Contract Proceeds ("Assignment") in the amount equal to the Judgment Payment
20 from its contract proceeds on the Project. The Assignment shall be executed contemporaneously
21 herewith and is incorporated herein by reference. Defendant shall work with its general
22 contractor, S R Construction, Inc., and the project owner, Las Vegas ICE, LLC/SDA, Inc., to
23 secure timely and complete payment of the Judgment Payment to the Trusts from the general
24 contractor and/or the project owner. Defendant acknowledges that it remains indebted to the
25 Trusts for the entire Judgment Amount until the Judgment Payment is received in full and that
26 failure of S R Construction, Inc. and/or Las Vegas ICE, LLC/SDA, Inc. to honor or pay the
27
28

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1 Assignment shall not relieve Defendant of this Judgment.

2 12. Upon Plaintiffs' timely receipt and negotiation of the Judgment Payment,
3 liquidated damages in the amount of Nine Thousand Seven Hundred Ninety Four and 26/100
4 Dollars (\$9,794.26) shall be waived ("Liquidated Damages Waiver"). However, if Defendant
5 fails to timely remit the Judgment Payment, the waiver shall be deemed revoked, and Defendant
6 shall be obligated to pay the liquidated damages to the Trusts.

7 13. Any payments toward the Judgment Amount shall be paid to Plaintiffs as third
8 party beneficiaries under the terms of the Labor Agreement and Trust Agreements. Payments
9 shall be made payable to "Painters Joint Trust Funds" and shall be remitted to Plaintiffs'
10 attorney, Christensen James & Martin, at 7440 W. Sahara Ave., Las Vegas, Nevada 89117, or at
11 such other location as the Defendant is notified in writing. Should any of Defendant's payments
12 be returned for insufficient funds, all subsequent payments shall be made using cashier's checks
13 or money orders.

14 14. Upon Plaintiffs' receipt and negotiation of Judgment Payment, this obligation will
15 have been satisfied and, upon receipt of a request therefor, Plaintiffs shall deliver to the
16 Defendant a written Satisfaction of Judgment. A Satisfaction of Judgment shall not be executed
17 nor delivered until all of Defendant's obligations under this Judgment have been fully performed.

18 15. The Plaintiffs shall hold and not file this Judgment through March 31, 2016. If the
19 Judgment Payment is not received on or before March 31, 2016, Plaintiffs shall have the
20 unconditional and immediate right to file and execute upon the Judgment for whatever amount
21 then remains due and owing without further notice to the Defendant or Order from the Court.

22 16. During the period that this Judgment remains unfiled, the Plaintiffs shall stay
23 claims against Bond No. 1000839944 issued to RDC by American Contractors Indemnity
24 Company ("Bond"). In the event this Judgment is filed, Defendant waives any and all objections
25 or defenses and Plaintiffs shall have the unconditional and immediate right to collect the
26 proceeds of the Bond for whatever amount then remains due and owing, including after-accruing
27 attorney's fees, without further notice to the Defendant or Order from the Court.
28

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1 17. This Judgment includes settlement of all known claims by Plaintiffs for fringe
2 benefit contributions and damages owed to the Trusts for the Audit Period and Post-Audit
3 Period. Defendant acknowledges that RDC has only been audited through June 30, 2015.
4 Although this Judgment includes claims for contributions and related damages for July 1, 2015
5 through August 30, 2015, those periods have not been audited. This Judgment is not intended to,
6 and it does not, resolve, address or secure claims that are as yet unknown to the Trusts, including
7 any claims that may later be revealed by Audit for periods subsequent to June 30, 2015. The
8 Trusts specifically reserve all Audit rights for periods that have not been audited.

9 18. The following potential claims are reserved by the Trusts: (i) any claims unrelated
10 to the Judgment Amount, accruing before or after the effective date of this Judgment, including,
11 without limitation, claims by any of the Trusts for additional contributions and related damages
12 that may be due and owing to any of the Trusts pursuant to the provisions of any collective
13 bargaining agreement to which Defendant may be bound that requires the payment of
14 contributions to the Trusts; (ii) the obligation of the Defendant or any trade or business under
15 common control of Defendant (to the extent Defendant or any trade or business under common
16 control with Defendant has any obligation) to pay, and the rights of the Trusts to assess and
17 collect, withdrawal liability pursuant to 29 U.S.C. § 1381 et. seq. (including the use of
18 Defendant's contribution history for purposes of calculating any withdrawal liability); and (iii)
19 any additional claims discovered by audit for any period.

20 19. The Stipulation and this Judgment shall be considered one instrument and shall
21 become binding when signed. Signatures to the Stipulation and Judgment, as provided via
22 facsimile or scanned document, shall be valid and shall be deemed the equivalent of original
23 signatures.

24 20. Defendants have consulted the attorney of their choice and fully understand the
25 obligations and consequences of this Judgment.

26 21. This Judgment constitutes the entire agreement between the Plaintiffs and the
27 Defendant and shall supersede any and all prior oral and/or written representations, negotiations,
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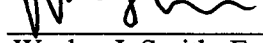
understandings and agreements.

IT IS SO ORDERED

DATED and done this 25th day of April, 2016.

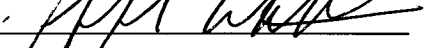

UNITED STATES DISTRICT COURT JUDGE

CHRISTENSEN JAMES & MARTIN

By: 
Wesley J. Smith, Esq.
Attorneys for Plaintiffs

Date: February 17, 2016.

RECREATION DEVELOPMENT COMPANY, LLC

By: 
Its: JEFF WHITTE President

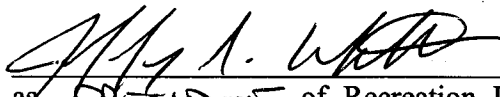
Date: February 16, 2016.

OATH AND VERIFICATION

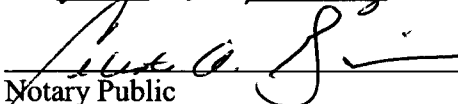
STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

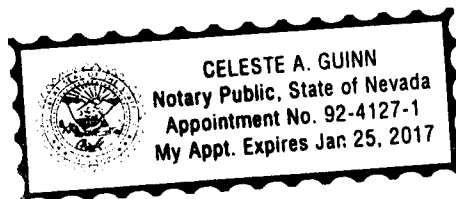
JEFF WHITTE, as PRESIDENT of Recreation Development Company, LLC, being first duly sworn upon oath, now verifies and declares that:

1. Entry of this Judgment by Confession, according to its provisions, is duly authorized; and
 2. The monies due and owing and the basis for said Judgment are accurately set forth in the Stipulation and this Judgment.
- Further you affiant sayeth naught.


as PRESIDENT of Recreation Development Company, LLC

Subscribed and Sworn before me
this 16th day of February, 2016.


Notary Public



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